

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2005-D21

PROVIDER –
Treyton Oak Towers

Provider No.: 18-5175

vs.

INTERMEDIARY –
Blue Cross Blue Shield Association/
AdminaStar Federal, Inc.

DATE OF HEARING -
April 13, 2004

Cost Reporting Period Ended -
June 30, 1998

CASE NO: 02-0028

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ISSUE:

Whether the Intermediary's adjustment removing the Skilled Nursing Facility (SNF) routine cost limit (RCL) exception amount was appropriate.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement due a provider of medical services.

The Medicare program was established to provide health insurance to the aged and disabled. 42 U.S.C. §§1395-1395cc. The Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Financing Administration (HCFA)) is the operating component of the Department of Health and Human Services (DHHS) charged with administering the Medicare program. CMS' payment and audit functions under the Medicare program are contracted out to insurance companies known as fiscal intermediaries. Fiscal intermediaries determine payment amounts due the providers under Medicare law and under interpretive guidelines published by CMS. See 42 U.S.C. §1395(h), 42 C.F.R. §§413.20(b) and 413.24(b)

At the close of its fiscal year, a provider must submit a cost report to the fiscal intermediary showing the costs it incurred during the fiscal year and the portion of those costs to be allocated to Medicare. 42 C.F.R. §413.20. The fiscal intermediary reviews the cost report, determines the total amount of Medicare reimbursement due the provider and issues the provider a Notice of Program Reimbursement (NPR). 42 C.F.R. §405.1803. A provider dissatisfied with the intermediary's final determination of total reimbursement may file an appeal with the Provider Reimbursement Review Board (Board or PRRB) within 180 days of the issuance of the NPR. 42 U.S.C. §1395oo(a); 42 C.F.R. §405.1835.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

The Third and Oak Corporation (Provider), a Kentucky not-for-profit corporation doing business as Treyton Oak Towers, owns and operates a continuing care retirement community, including a 60-bed skilled nursing facility. The following timeline outlines the dates relevant to this case:

March 31, 1997 – By letter to the Provider's management company, Aetna, the Provider's previous Intermediary, granted an interim exception to the routine cost limit (RCL) and requested additional documentation to support an exception.¹

January 30, 1998 and February 13, 1998 - By letters to the Provider's former and new management company, AdminaStar Federal, the new Intermediary, (Intermediary) requested the Provider's original exception request and additional documentation.²

¹ Intermediary Pos. Paper Ex. 2.

² Intermediary Pos. Paper Ex. 3.

July 1, 1998- The Intermediary, by letter to the Provider's Administrator, allowed a tentative exception of \$71.20 and requested that the Provider submit its exception request with supporting documentation.³

September 28, 2000 - An NPR was issued allowing a tentative RCL exception.⁴

October 25, 2000 - The Intermediary issued a letter to the Provider's Administrator stating that the Provider must submit a proper exception request and the required documentation within 180 days of the September 28, 2000 NPR.⁵

April 25, 2001- After sending two additional letters⁶ to the Provider's Assistant Executive Director (AED) indicating that the Intermediary would reopen the cost report, a revised NPR was issued removing the exception amount previously allowed on an interim basis.⁷

October 10, 2001- The Provider filed an appeal with the Board protesting the removal of the RCL exception.

November 29, 2001- The Provider entered the PRRB appeals pilot program to expedite appeal resolution. The Board's correspondence explaining the pilot program indicated that "all due dates are hereby suspended in order to give the parties the opportunity to reach an agreement on the resolution of all outstanding issues."⁸

March 24, 2003 - The Intermediary e-mailed the Provider stating: "This is to confirm my approval of an extension request for submitting a detailed narrative on your FYE 6/30/98 appeal until April 30, 2003."⁹

³ Intermediary Pos. Paper Ex. 4.

⁴ Intermediary Pos. Paper Ex. 5.

⁵ Intermediary Pos. Paper Ex. 6.

⁶ Intermediary Pos. Paper Ex. 7 (letter dated April 9, 2001) and Ex. 8 (letter dated April 16, 2001).

⁷ Provider Pos. Paper Ex.3

⁸ The Board's correspondence is within the Board's case record.

⁹ Pro. Post Hear. Brief, Ex. P-1.

April 30, 2003 - The Provider sent its exception request to the Intermediary.¹⁰

PARTIES CONTENTIONS

The Provider contended that the exception should be granted, as it was led to believe that the deadline to file its exception request was extended to April 30, 2003. The Provider explained that it was placed in a PRRB appeals pilot program and the Intermediary, through oral and written communications, gave the Provider an extension until April 30, 2003 to file relevant information.

The Provider further contends that the Intermediary's argument that there is a technical difference between the PRRB appeal (and time extensions related to receiving information pertinent to that appeal) and the discussions that were being held between Provider and the Intermediary following the April 16, 2001 letter is meaningless. There was never such a distinction in the minds of those representing the Provider, and the Provider's AED testified at the hearing that the Provider did not see these "as two separate issues" but rather "one related case." (See Provider's post-hearing brief, page 4). In addition, the Provider asserts that any such distinction was abrogated by the pilot program, which encouraged the parties to resolve the dispute through discussions.

Prior to the Intermediary's April 16, 2001 correspondence, the Provider claims it was unaware that its exception request was problematic, as the Intermediary's prior notices were sent to the incorrect contact person. The Provider also maintains that the Intermediary is authorized to waive the requirements of the regulation (42 C.F.R. §413.30) regarding timely filing of an exception request.

The Intermediary contends that pursuant to 42 C.F.R. §413.30 the Provider was not entitled to an exception, as it failed to submit its exception request by October 22, 2001, the deadline imposed by the regulation (i.e., within 180 days following the issuance of the April 25, 2001 revised NPR). The Provider did file an appeal request timely, but although the Provider was advised in letters dated March 31, 1997, January 30, 1998, February 13, 1998, July 1, 1998, October 25, 2000, and April 9, 2001 that it needed to submit its exception request with supporting documentation, this requirement was not met until April 30, 2003.

The Provider contends that it had various communications with the Intermediary in which the Intermediary indicated some potential for flexibility in processing an exception request. However, the Intermediary's appeals coordinator, who had discussions with the Provider regarding its appeal request, was unaware at the time of those discussions that the Provider had never submitted an exception request. In addition, the appeals coordinator's first contact with

¹⁰ Intermediary Pos. Paper Ex. 10.

the Provider was on September 18, 2002, well after the deadline for the Provider to have submitted an exception request.

The Intermediary did approve extensions for submitting arguments relating to the appeal but granted no extensions to file the exception request, as the Intermediary has no flexibility to modify regulatory requirements.

Joseph Kirwan, Esq., of Ogden, Newell and Welch, PLLC represented the Provider. James R. Grimes, Esq., of the Blue Cross Blue Shield Association, represented the Intermediary.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law and guidelines, the parties' contentions and the evidence presented, finds that the Provider's request for an RCL exception was not timely filed. The governing regulation at 42 C.F.R. §413.30(c) sets forth explicit procedures with which a provider must comply in making a timely request to CMS. This regulation states that a "provider's request must be made to its fiscal intermediary within 180 days of the date on the intermediary's notice of program reimbursement."¹¹

Because the revised NPR disallowing the applicable RCL exception was issued on April 25, 2001, the deadline for requesting an exception pursuant to 42 C.F.R. §413.30 was October 22, 2001. The Board notes that the Provider's witness conceded that its request was untimely filed pursuant to this regulation.¹²

The Board also notes that the Provider's witness conceded that the Intermediary gave no written authorization explicitly extending the exception request filing deadline.¹³ Moreover, the Provider's allegation that the Intermediary verbally extended the deadline as authorized by the pilot program is moot, as the parties entered such program after the October 22, 2001 filing deadline. Additionally, even if the Intermediary had extended the deadline, such an extension

¹¹ The 1998 version of the regulation which was effective during the relevant cost year was slightly modified prior to the issuance of the revised NPR, but both versions require the provider to make its request to the intermediary within 180 days of the NPR. The Board's analysis would, therefore, remain the same applying either version.

¹² Tr. at 53. The witness also admitted that she became aware of the regulatory requirements in April 2001 (Tr. at 49). The witness believed that its management company is responsible to the Provider for not complying with the exception request deadline. (Tr. at 58).

¹³ Tr. at 62-63.

would be unauthorized, as neither the Intermediary nor the Board may waive the regulatory procedures for filing exception requests.

Finally, the Provider claims that its AED, whom it asserts should have been contracted as the authorized representative, did not receive the letters indicating that the exception request was problematic prior to April 16, 2001. It is undisputed that the AED was not prejudiced, as she received the April 16, 2001 warning letter and the subsequent revised NPR which triggered the exception request deadline. Moreover, the letters in question were sent to the Provider's own executive director/ administrator, who was also an employee of the Provider's management company. (Tr. pages 45 and 46) Finally, there was no documentation indicating that the AED was the authorized contact person as alleged.

DECISION AND ORDER:

The Provider's request for an exception to the RCLs was not timely filed pursuant to 42 C.F.R. §413.30(c). The Intermediary's adjustment is affirmed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Gary B. Blodgett, D.D.S.
Martin W Hoover, Jr., Esquire
Elaine Crews Powell, C.P.A.
Anjali Mulchandani-West

FOR THE BOARD:

DATE: January 7, 2005

Suzanne Cochran
Chairperson